

Message Text

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ACTION L-03

INFO OCT-01 EA-11 ISO-00 JUSE-00 CIAE-00 DODE-00 PM-07

H-03 INR-10 NSAE-00 NSC-10 PA-04 RSC-01 PRS-01 SPC-03

SS-20 USIA-15 SAM-01 IO-14 EB-11 COME-00 CPR-02 COA-02

TRSE-00 SCA-01 SCSE-00 OMB-01 DRC-01 /122 W

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R 010951Z MAR 74

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 1470

UNCLAS MANILA 2409

E.O. 11652: NA

TAGS: PFOR

SUBJ: PENDING SOVEREIGN IMMUNITY LEGISLATION

REF: STATE 026018

1. FOLLOWING ANSWERS TO QUESTIONS POSED IN REFTEL WERE
OBTAINED FROM LOCAL PHIL PRACTICING ATTORNEYS AND
EXPERIENCE EMB HAS HAD IN THIS AREA.

2. PARA 2(A) REFTEL. NORMALLY PHIL CITIZENS MAY NOT
BRING ACTIONS IN TORT, CONTRACT OR ADMIRALTY AGAINST
NATIONAL GOVT. ART. XV, SEC. 16, 1973 CONSTITUTION
STATES, QUOTE THE STATE MAY NOT BE SUED WITHOUT ITS
CONSENT. UNQUOTE HOWEVER, CITIZENS MAY BRING ADMINISTRA-
TIVE ACTION AGAINST AUDITOR GENERAL FOR MONEY DAMAGES
WITH POSSIBILITY OF APPEALING DIRECTLY TO SUPREME COURT
IN ADVENT OF UNFAVORABLE DECISION. ALSO MAY BRING SUIT
AGAINST GOVT IF ACTS ARE COMMITTED BY QUOTE SPECIAL
AGENT UNQUOTE AS DEFINED IN ART. 2180 PHIL CIVIL CODE.
IN ADDITION, LAW CREATING CERTAIN GOVT CORPORATIONS
ALLOWS FOR SUITS TO BE BROUGHT AGAINST SUCH ENTITIES,
AND COURTS HAVE ALLOWED SUITS AGAINST GOVT IN RELATION
TO LABOR MATTERS AND CERTAIN PURELY PROPRIETARY FUNCTIONS
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PERFORMED BY GOVT.

3. PARA 2(B) REFTEL. IN GENERAL, LAW RELATING TO SOVEREIGN IMMUNITY HAS BEEN CREATED BY LONG LINE OF JUDICIAL DECISIONS. LATEST AND MOST COMPREHENSIVE DECISION IN THIS AREA IS REPUBLIC OF THE PHILIPPINES VS. HON. GILLANO VILLANSOR, ET AL, SUPREME COURT CASE GR-L-3076 DATED NOV. 28, 1973.

4. PARA 2(C) REFTEL. US CITIZEN OR CORPORATION WOULD BE TREATED IN SAME MANNER AS STATED IN PARA 2. US CORPORATION OR COMPANY MUST BE LICENSED IN PHIL TO BRING ACTION UNLESS IT IS NOT DOING BUSINESS IN PHIL AND SUBJECT OF SUIT IS RELATED TO ISOLATED TRANSACTION. RECIPROCITY IS NOT FACTOR.

5. PARA 3(A) REFTEL. PHIL COURTS WOULD APPLY SAME RULES AS THEY APPLY TO SUITS AGAINST THEIR GOVT, IN ANY ACTION BROUGHT AGAINST FOREIGN GOVT. IN PHIL COURTS.

6. PARA 3(B) REFTEL. SERVICE OF PROCESS ON FOREIGN STATE, ITS AGENTS OR INSTRUMENTALITIES IS OBTAINED BY FORWARDING PROCESS BY DIPLOMATIC NOTE TO FOREIGN DIPLOMATIC MISSION. PHIL DEPT OF JUSTICE CIRCULAR PROMULGATED PROCEDURE.

7. PARA 3(C) REFTEL. THERE IS PRESENTLY NO PROCEDURE AS TO WHO SHOULD RECEIVE NOTIFICATION OF SUIT BROUGHT AGAINST PHIL GOVT INTERESTS IN COURTS OF ANOTHER COUNTRY.

8. PARA 4(A) AND (B) REFTEL. IF ACTS OF FOREIGN GOVT, ITS AGENTS OR INSTRUMENTALITIES ARE SUCH AS TO ALLOW JUDICIAL ACTION TO BE BROUGHT, THERE IS NO REQUIREMENT FOR ASSETS TO BE ATTACHED IN ORDER TO ESTABLISH JURISDICTION. SERVICE, AS EXPLAINED IN PARA 6 ABOVE, IS SUFFICIENT.

9. PARA 5 REFTEL. PHIL COURTS MAKE DISTINCTION BETWEEN ESTABLISHMENT OF JURISDICTION AND ABILITY TO FORCIBLY EXECUTE AGAINST GOVT ASSETS. GOVT ASSETS, AS SUCH, ARE NOT SUBJECT TO EXECUTION. RECIPROCITY IS NOT FACTOR.
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